Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Universal Service Contribution Methodology A National Broadband Plan for Our Future	))))))	 WC Docket No. 06-122 GN Docket No. 09-51

REPLY COMMENTS OF THE NEBRASKA PUBLIC SERVICE COMMISSION

EXECUTIVE SUMMARY

Universal service is about connectivity. It is Congress' commitment to bring accessible and affordable communications services to rural America, low-income populations, health care facilities, schools and libraries. As part of that commitment, Congress instructed the Commission to consider evolving technology and to modify universal service policies to keep pace with the needs of consumers. In its *Transformation Order*, the Commission recognized the logical extension of universal service support for broadband services. However, it is critical the Commission reform its contribution rules to ensure that universal service support is sufficient, stable and capable of meeting the needs of rural consumers without undermining important state programs.

In 2001, the Commission sought comment on whether and how to streamline and reform the contribution assessment methodology.[1] While the Commission has, on a limited basis, adopted reforms, the Commission has not gone far enough to provide long-term stability, fairness, and sufficiency to the contribution base. The Commission must act swiftly to close the existing loopholes and create a sustainable, equitable and nondiscriminatory funding base.

As it considers contribution reform, the NPSC recommends the Commission do the following:

- Explicitly recognize the important role state universal service programs continue to play bringing affordable access to communications services to consumers.
- Solidify its contribution base by requiring all providers that benefit from the network to contribute to universal service (both federal and state).
- Establish an annual contribution rate.
- Address current uncertainties related to the assessment rules and expectations.
- Make communications services more affordable to low-income consumers by limiting the pass-through of universal service fund charges for all Lifeline subscribers.

[1] *See Federal-State Board on Universal Service et al.*, CC Docket No. 96-45 et al., Notice of Proposed Rulemaking, 16 FCC Rcd 9892,9894-96, ¶¶ 2-6 (Rel. May 8, 2001) (2001 NPRM).

INTRODUCTION

The Nebraska Public Service Commission (NPSC) hereby files these Reply Comments on the proposals contained in the Commission's Further Notice of Proposed Rulemaking (FNPRM).[2] The NPSC appreciates the opportunity to file reply comments in this proceeding.

DISCUSSION

I. The Commission Should Explicitly Recognize the Importance of State Universal Service Programs

A. Background

For over a decade, the NPSC has promoted affordable access to communications services throughout Nebraska through universal service policies designed to complement and supplement the federal universal service program. The NPSC created a mechanism which required all telecommunications providers to contribute equitably and non-discriminately to the NUSF through a revenue-based surcharge assessed on intrastate telecommunications. The NPSC required intrastate access reform, determined high-cost support needs and created a mechanism to target support to rural areas, made support available to competitive carriers, helped establish a statewide Telehealth network, established a mechanism to fund wireless tower construction in remote areas, and supported communications access to low-income consumers with additional NUSF support. Recently, following the Commission's lead, the NPSC created a broadband pilot program, providing grants for capital construction costs for broadband networks. In June

[2] Further Notice of Proposed Rulemaking, WC Docket Nos. 06-122, GN Docket No. 09-51, released April 30, 2012 (FNPRM).

of this year, the NPSC awarded $4 million in broadband support to seven applicants for broadband projects throughout the state.

State universal service programs provide important benefits to consumers. Broadband connectivity in rural areas will be developed at a faster pace with state universal service support and oversight.

B. Federal/State Cooperation

While state universal service programs are undoubtedly not the first Commission priority in this proceeding, uncertainty on the federal level precipitates uncertainty at the state level. State universal service programs must work in cooperation with the federal program to further the universal service objectives in the Act and to benefit consumers.[3]

We have consistently held the position that universal service is a shared responsibility. States have a vested interest in promoting the development of new and better services to customers. In prior comments, the NPSC asked the Commission to expressly articulate that states have the ability to determine their own universal service contribution mechanism, i.e., revenue-based, connections-based or a hybrid mechanism to ensure the sustainability of state programs. State commissions need to have the ability to balance the burden placed on consumers within their borders against the need for universal service support. It is particularly important in rural states that policies are designed to produce a sustainable contribution mechanism that will impact consumers fairly.

[3] *See* FNPRM ¶ 6 (recognizing the historic partnership with state governments in ensuring universal service).

C. Clear Statutory Framework Is Key

The NPSC echoes the concerns raised by the Nebraska Rural Independent Companies[4] (NRIC), the Public Service Commission of the District of Columbia (DC PSC)[5] and the Kansas Corporation Commission[6] (KCC) that federal reform may jeopardize state universal service programs or create new legal issues regarding the ability of states to maintain solvent programs. We support NRIC's recommendation that the Commission properly interpret the Act to ensure that state universal service programs can continue to carry out consistent and supplemental policies.[7] In doing so, the Commission should be clear that § 254(f) permits states to adopt regulations and prescribe additional definitions to assess broadband connections or services to support state programs on the same basis as the Commission ultimately uses for federal assessments.

Additionally, the Commission should also affirm that state programs may impose contribution requirements under § 254(f) on a portion of broadband service complementary to the federal assessment and that such imposition would not violate the "rely on or burden" prohibition.[8] We share the concern expressed by the Kansas Corporation Commission that any shift in the current regime will likely result in provider nonpayment of state universal service assessments based on allegations that such

[4] Comments of the Nebraska Rural Independent Companies in Response to Further Notice of Proposed Rulemaking Released April 30, 2012, Filed July 9, 2012 (NRIC Comments).

[5] Comments of the Public Service Commission of the District of Columbia, Filed July 9, 2012 (DC PSC Comments).

[6] Comments of the Kansas Corporation Commission, Filed July 9, 2012 (KCC Comments).

[7] *See* NRIC Comments at 8-13.

[8] *See id.*

assessments "rely on" or "burden" the federal mechanism.[9] It is imperative, if the Commission wants state universal service programs to continue to supplement federal programs, the Commission must make this determination. If the Commission should adopt a non-jurisdictional contribution base, the Commission should make clear that states have the authority to also assess the same base, and that state contribution mechanisms currently in place will not be inconsistent with or burden the newly-adopted federal contribution base.

If the Commission shifts away from using revenues to determine contributions, then the Commission should make clear that a change in the federal universal service contribution mechanism does not necessitate changes in state universal service contribution mechanisms. The Commission should explicitly hold that state universal service funds based on intrastate retail revenues as opposed to numbers or connections will not be inconsistent with or burden the federal universal service mechanism.

II. The Commission should broaden contribution base

A. Extension of the Contribution Requirements to Broadband Services

The NPSC agrees with the numerous commenters which support a broadened contribution base.[10] Now that the Commission has decided to support broadband networks through its Connect America Fund, the Commission must ensure the contribution mechanism is sufficient to support its objectives. We agree with the commenters who

[9] *See* KCC Comments at 5.

[10] *See, e.g.,* Comments of the National Association of State Utility Consumer Advocates on the USF Contribution Mechanism Further Notice of Proposed Rulemaking at 5(Filed July 9, 2012)(NASUCA Comments); Comments of Centurylink at 10-11 (Filed July 9, 2012); Comments of the National Telecommunications Cooperative Association et al., at 15 (Filed July 9, 2012); *and* DC PSC Comments at 2

suggested the contribution requirements be broadened to include all retail broadband Internet access services. Expanding the contribution base makes sense for a number of reasons. An expanded base would close loopholes that currently exist making the contribution mechanism equitable and nondiscriminatory. An expanded base would likely reduce the contribution burden on consumers as the base of contributing providers and services will increase. Finally, assessing broadband services will ensure that the federal fund remains solvent.

B. One Way VoIP and Text Messages

The NPSC agrees with the commenters recommending USF assessment on one way VoIP services and text messaging.[11] Assessing one-way VoIP providers will close an existing loophole which is inequitable and discriminatory. All retail service providers should be assessed equally and fairly. A safe harbor allocation should be adopted for providers of one-way VoIP and text messaging services with a reasoned allocation of interstate and intrastate jurisdictional components.

Likewise, we agree with the commenters that text messaging services are simply replacements for voice communications.[12] Text messages are simple two-way real time conversations transmitted in textual rather than audio format. There is no conversion,

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[11] *See* Comments of XO Communications Services, LLC at 25 (Filed July 9, 2012) (XO Comments).

[12] *See id.*, at 24-25.

information storage or "enhanced" functionality. We strongly disagree with the position that text messaging is an information service.[13]

However, if the Commission does not wish to determine the proper classification for text messaging services, it should nonetheless, subject text messaging services to contribution requirements using its permissive authority. The Commission should determine that text messaging can be subject to both federal and state universal service assessments and should provide CMRS carriers with the option of using the existing wireless safe harbor, traffic study or actual traffic contribution options.

III. The Commission should Establish an Annual Contribution Amount

The NPSC supports the Commission proposal to move to an annual contribution factor instead of a quarterly factor.[14] The NPSC believes an annual factor will bring stability and predictability to the Commission's program. The NPSC similarly adopts an annual surcharge percentage based on forecasts which are performed once a year but reviews the forecast data continually to determine trends or significant variances throughout the year. The NPSC suggests the Commission require carriers to continue to project revenues on a quarterly basis.

[13] *See* Comments of Verizon at 33 (Filed July 9, 2012)(Verizon Comments).

[14] *See* FNPRM ¶ 350.

IV. The Commission should develop an efficient hybrid contribution mechanism which removes possibilities of arbitrage

In a past ex parte conversation with the Commission staff, we discussed the possibility of a hybrid mechanism made up of connections-based and revenue-based elements.[15] A connections-based element may provide stability in an evolving market. But a connections-based contribution mechanism alone may unfairly assess consumers based on the access to and not their usage of the network.[16] A revenues-based mechanism would more accurately reflect the decisions made by the consumer to subscribe to a particular service. However, as history has demonstrated, using a revenue-based contribution mechanism is vulnerable to arbitrage and carrier-driven classifications for the purpose of avoiding the contribution requirement. We continue to believe that a hybrid mechanism would be the most equitable and nondiscriminatory way to capture universal service contributions. However, there are a number of commenters responding that a hybrid mechanism would be difficult to administer.[17] If the Commission should agree with those commenters, then alternatively, we recommend the Commission update its revenue-based contribution mechanism.

V. The Commission should require all carriers to exempt Lifeline Subscribers from Contribution Obligations

Beginning at paragraph 401 of the FNPRM, the Commission asks whether it should require competitive carriers to exempt Lifeline subscribers from paying the universal

[15] *See* Nebraska Public Service Commission, Notice of Ex Parte filed August 20, 2010.

[16] *See* NASUCA Comments at 20.

[17] *See e.g.*, Comments of Cincinnati Bell, Inc. at 22 (Filed July 9, 2012); Comments of Ad Hoc Telecommunications Users Committee at 20 (Filed July 9, 2012); Comments of AARP at 49 (Filed July 9, 2012); and NASUCA Comments at 21.

service surcharge. We strongly support the Commission making this change. Since the inception of the NUSF, the NPSC has required all Lifeline subscribers be exempt from paying into the NUSF. This mandate is so important to the NPSC that it specifically requires all carriers to certify, on an annual basis, they are exempting Lifeline subscribers from paying the NUSF surcharge. The NPSC believes this exemption advances the affordability principle in the Act.

Likewise, we agree with the DC PSC that there is no reason to exempt incumbent carrier Lifeline subscribers while requiring competitive carrier Lifeline subscribers to contribute to universal service.[18] Applying the exemption to all Lifeline subscribers will level the competitive playing field for all carriers. Accordingly, the NPSC recommends adoption of the rule set forth in paragraph 404 of the FNPRM.

CONCLUSION

For the foregoing reasons, the NPSC encourages the Commission to give thoughtful consideration of the recommendations presented herein. The NPSC looks forward to working with the Commission to implement the important reforms adopted in this proceeding.

Respectfully submitted,

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[18] *See* DC PSC Comments at 4-5.